

THE CITY OF NORFOLK



To the Honorable Council
City of Norfolk, Virginia

January 11, 2022

From: Robert Carteris
Director of Utilities

Subject: Right of Entry Agreement at 3575
Mississippi Avenue

Reviewed:

Ward/Superward: 4/7

Patrick Roberts, Deputy City
Manager

Approved:

Dr. Larry H. Filer II, City Manager

Item Number: C-10

I. **Recommendation:** Adopt Ordinance 3482

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an ordinance approving a right-of entry permitting the Hampton Roads Sanitation District (HRSD) to go upon and use City owned property located at 3575 Mississippi Avenue to construct a wastewater pump station.

IV. **Analysis:**

This recommended action is made for the following reasons.

- Maintain and enhance the level of wastewater collection and conveyance services to the Ingleside neighborhood,
- Proactively replace aging infrastructure with new facilities, and
- Protect the Elizabeth River by relocating the pump station site further away from the shoreline.

V. **Financial Impact:**

This recommended action involves a vacant, unused parcel of land owned by the City with an assessed value of \$57,500 and its commitment to be used as new wastewater pump station site.

The employment impact on community will remain neutral.

VI. Environmental:

A positive impact to the natural resources is expected because of constructing the new facilities further away from the Elizabeth River.

VII. Community Outreach/Notification:

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action:

N/A.

IX. Coordination/Outreach:

This letter and ordinance have been coordinated with:

- Department of Utilities and
- City Attorney's Office

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A to Ordinance - Agreement

Supporting Material:

- Exhibit A to Ordinance (PDF)

Form and Correctness Approved: *BAP*

Contents Approved:

By: _____
Office of the City AttorneyBy: _____
DEPT. Utilities

NORFOLK, VIRGINIA

Ordinance No.

AN ORDINANCE APPROVING A RIGHT OF ENTRY PERMITTING HAMPTON ROADS SANITATION DISTRICT TO GO UPON AND USE CITY-OWNED PROPERTY LOCATED AT 3575 MISSISSIPPI AVENUE TO CONSTRUCT A WASTEWATER PUMP STATION.

- - -

WHEREAS, Hampton Roads Sanitation District ("HRSD") have plans to construct a wastewater pump station that will then be given to the City of Norfolk ("City") on the City's property located at 3575 Mississippi Avenue ("Property"); and

WHEREAS, HRSD has requested the use of the Property for the construction of the pump station and the laydown of any necessary construction equipment; and,

WHEREAS, the City is agreeable to allowing HRSD to use the Property for such purposes and wishes to enter into a Right of Entry Agreement ("Agreement") outlining the terms by which HRSD may use the Property; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Agreement between the City and HRSD that permits HRSD to go upon and use the Property for the construction of a wastewater pump station and any necessary equipment laydown, a copy of

which Agreement is attached hereto as Exhibit A, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the Agreement on behalf of the City and to do all things necessary and proper in furtherance thereof.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Agreement as he may deem appropriate, consistent with the Council's intent as expressed herein.

Section 4:- That this ordinance shall be in effect from and after the date of its adoption.

Attachments:

Exhibit A - Agreement (6 pages)

THIS RIGHT OF ENTRY AGREEMENT (“Agreement”), made this ____ day of _____, 2021, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia (the “City”), Grantor, and **HAMPTON ROADS SANITATION DISTRICT** (“HRSD”), Grantee.

WITNESSETH:

WHEREAS, the City owns certain property located at 3575 Mississippi Avenue, Norfolk, Virginia 23502 (the “Property”); and

WHEREAS, HRSD has plans to construct a wastewater pump station on the Property and then convey the station to the City (the “Project”); and

WHEREAS, in order to safely store equipment, material and vehicles needed for the Project, and to construct the pump station, HRSD needs full access to the Property to complete the Project; and

WHEREAS, HRSD has requested permission to utilize the Property for such purpose, to which the City is agreeable upon certain terms and conditions.

NOW, THEREFORE, by this Agreement the City does hereby grant to HRSD, its subcontractors and consultants, a right of entry and permission to enter upon and use the Property subject to the following terms and conditions:

1. The right of entry and permission to go upon and use the Property shall be from the date this Agreement is fully executed by all parties until August 31, 2026 (“Expiration Date”), unless extended in writing by the City.

2. HRSD shall use the Property for construction of the pump station, and as a laydown and staging area for construction equipment, material, and vehicles used in association with the Project and for no other purpose.

3. This Agreement and all rights and permissions granted thereby are subject to the City's right of revocation, at any time, and in its sole discretion.

4. The permission granted herein is a license only and confers no rights in the Property whatsoever.

5. The City shall have the right to make periodic inspections of the manner in which HRSD is using the Property, and HRSD shall exercise reasonable care in the performance of its work and other authorized activities.

6. The pump station shall be designed and constructed in accordance with the City of Norfolk, Department of Utilities, Design and Construction Standards and constructed in accordance with the standards set forth in Hampton Roads Planning District Commission, Regional Construction Standards as modified by the City of Norfolk. Successful completion of the Project shall be subject to the approval of the City of Norfolk's Director of Utilities (the "Director").

7. Upon successful completion of the Project, HRSD agrees to convey the pump station to the City at no cost by execution of a deed of gift.

8. The City is entering into this Agreement based on representation that HRSD is willing to construct the pump station at its own risk. In the event HRSD fails to successfully complete the Project as set forth in Paragraph 6 above, then HRSD or its agents or assigns shall remove any improvements constructed within the Property at HRSD's expense and return the Property as close as reasonably possible to the condition it was in prior to HRSD's commencement of the Project or compensate the City for any damage to the Property caused by the construction.

9. To the extent permitted by law and without waiving rights under sovereign immunity, HRSD expressly agrees to indemnify and save harmless the City and its representatives,

from and against losses and claims, demands, suits, actions, payments and judgments, including any and all expense, legal and otherwise, incurred by the City and/or its representatives, in the defense of any claim or suit brought or recovered against the City as a result of the use of the Property by HRSD and its agents or employees under this Agreement.

10. HRSD will maintain during the term of this Agreement insurance of the types and in the amounts described below. All insurance policies affected by this Agreement will be primary and noncontributory to any other insurance or self-insurance maintained by the City and will be written in an ISO “occurrence-based” form approved for coverage in the Commonwealth of Virginia. Policy limits may be met via either a singular policy, or in combination with primary and excess, or umbrella, insurance policies. Unless otherwise specifically approved by the City, all public, general liability and automobile/vehicle liability policies will include the City and its employees as additional insured. All policies will provide that HRSD and any additional insured will receive at least thirty (30) days written notice in the event of cancellation of, or material change in, any of the policies.

COMMERCIAL GENERAL LIABILITY INSURANCE and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence, \$3,000,000 general aggregate. CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and liability assumed under this Agreement.

AUTOMOBILE/MOTOR VEHICLE LIABILITY INSURANCE for the coverage of vehicles and equipment used for the purposes of this Agreement. Automobile liability insurance must be maintained with a limit of not less than \$2,000,000 combined single limit; or, bodily injury \$1,000,000 each person, \$2,000,000 each accident, and property damage \$100,000 each

accident. Such insurance shall cover liability arising from any motor vehicle as defined by Commonwealth of Virginia laws and shall include coverage for owned, hired and non-owned motor vehicles, as well as uninsured and underinsured motorists.

WORKER'S COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE as required by statute with limits of at least \$500,000 per accident/disease, and policy limit of \$500,000.

SUBCONTRACTOR'S INSURANCE, if applicable, for work performed by subcontractor(s) in association with this Agreement, and not covered under HRSD's insurance policies, and with coverage of the same type and limits required of HRSD. Each subcontractor will furnish to HRSD two (2) copies of the policies, or certificates of insurance, evidencing the applicable insurance. The subcontractor will comply with the same requirements regarding indications of coverage, renewal and submission of policies as is required of HRSD. HRSD will furnish at least one copy the subcontractor's policies/certificate to the City.

Failure to provide the required insurance certificate(s) may result in termination of this Agreement at the sole discretion of the City.

11. Upon the Expiration Date, HRSD shall repair any damage that results from HRSD's use of the Property.

12. Any costs associated with violations of the law, including but not limited to, remediation, clean-up costs, fines, administrative or civil penalties or charges, and third-party claims imposed on the City by any regulatory agency or by any third-party as a result of the noncompliance with applicable federal, state or local environmental laws, regulations or nuisance statutes by HRSD, or by any of its employees, subcontractors, consultants or sub-consultants, in connection with the work or other activities contemplated herein, shall be paid by HRSD.

13. This Agreement and the rights and permissions granted thereby may not be assigned by HRSD to another entity.

14. This Agreement may only be amended and/or extended by a subsequent agreement in writing, executed by all parties.

15. In exercising the rights granted hereby and undertaking activity pursuant to this Agreement, HRSD shall act in accordance with the applicable state, federal, and local laws having jurisdiction over such matters.

16. Each party expressly warrants that the officer signing this Agreement on its behalf has full and current legal authority to act on its behalf.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials as of the day and year first above written.

HAMPTON ROADS SANITATION DISTRICT

By: _____
Title: _____

CITY OF NORFOLK

By: _____ (SEAL)
City Manager

ATTEST:

City Clerk

Attachment: Exhibit A to Ordinance (Right of Entry Agreement at 3575 Mississippi Avenue)

APPROVED AS TO CONTENT:

Department of Utilities

APPROVED AS TO CONTENT:

Department of Development

APPROVED AS TO FORM AND CORRECTNESS:

Assistant City Attorney